



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20251
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,586	02/09/2001	Toshiaki Furuhashi	0649-0774P	5716

2292 7590 06/18/2002

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	61

DATE MAILED: 06/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/762,586	Applicant(s) Furuhashi et al
	Examiner Lien Tran	Art Unit 1761
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
<small>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</small> <small>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</small> <small>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</small> <small>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</small> <small>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</small>		
Status		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Apr 4, 2002</u>		
2a) <input checked="" type="checkbox"/> This action is FINAL. 2b) <input type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.		
Disposition of Claims		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-17</u> is/are pending in the application.		
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>1-17</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.		
Application Papers		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. <small>Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</small>		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. <small>If approved, corrected drawings are required in reply to this Office action.</small>		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
Priority under 35 U.S.C. §§ 119 and 120		
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
<small>*See the attached detailed Office action for a list of the certified copies not received.</small>		
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
Attachment(s)		
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____		

Art Unit: 1761

1. The objection under 35 USC 132 for the insertion on pages 18 and 20 as introducing new matter into the disclosure is maintained for the same reason set forth in paragraph 1 of the previous office action.

In the response filed April 4, 2002, applicant states the amendments were made to correct typographical error because the original numbers were improperly translated. The examiner can not determine that the error was a typographical error. There is no evidence of record to show the original numbers. Thus, the objection is maintained.

2. The 112 second paragraph rejection of claims 12-15 is hereby withdrawn.
3. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yong et al for the same reason set forth in paragraph 3 of the previous office action.
4. In the response filed April 4, 2002, applicant argues Yong et al do not disclose or teach a frozen pie dough to be stored in a frozen state as presently claimed. This argument is not persuasive. Yong et al disclose a dough containing flour, water and a fat; the dough claimed contains the same components. Thus, both products are dough; there is no limitation in the claims which differentiates between a pie dough and the dough disclosed by Yong et al. As to storing the dough in a frozen state, Yong et al teach storing the dough under refrigeration; both refrigeration and freezing are cold storage. One skilled in the art readily recognized that freezing keeps the product for a longer period of time than refrigeration. Thus, it would have been obvious to one skilled in the art to freeze the product if long term storage is intended. Applicant states such a general conclusion is not a reason why one having ordinary skill in the art would be

Art Unit: 1761

motivated or reasonably expect to be successful. The motivation lies in the fact that freezing condition keeps the product for a longer period of time and refrigeration; thus, if one wants to store the product for a long period of time, it would have been obvious to freeze the product. One in the baking art would know that dough kept in the refrigerator must be used in a short time and one can freeze the dough for a long time before using it. Thus, freezing or refrigerating is dictated by time when the product will be used. Applicant further argues there are chemical differences between the Yong dough and the claimed dough; what chemical differences is applicant referring to. The claims do not set forth any chemical difference. Applicant states placing the Yong et al dough from a frozen state directly into an oven at high temperature and for a short period of time does not give the same pie dough as claimed; this statement is not supported by factual evidence. Applicant also states refrigerating allows the leavening agents to continuously react while being stored. This statement is not supported by factual evidence; Yong et al do not disclose that the leavening agents continuously react while being stored. As to the issue of freezing the dough, it is already stated above why it would have been obvious to freeze the product. Applicant further argues the Yong et al dough is chemically and structurally different from the claimed product. While arguing this, applicant has not shown that the Yong et al product is chemically and structurally different from the claimed product. As to the use of a combination of leavening agents, Yong et al teach the use of both fast acting and delayed action type chemical leavening agents; applicant's attention is directed to columns 7-8. Applicant states in the Amendment of October 25, 2002, a showing was attached to show the difference between

Art Unit: 1761

the voids of the claimed dough with those of Yong et al. The showing is not persuasive because there is no description as to how the dough of Yong et al is made. If it is not made as exactly taught by Yong et al, then the showing is not an accurate comparison. Yong et al teach applying the leaveners by sprinkling one or both of the leaveners onto the flour/water matrix or dough after forming the flour/water matrix. This is the same way of applying the leaveners as claimed. Thus, it is obvious any property resulting on the application of the leaveners will also occur in Yong et al.

5. Applicant's arguments filed April 4, 2002 have been fully considered but they are not persuasive.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

June 13, 2002


LIEN TRAN
PRIMARY EXAMINER
